claim them against B, to whom X mortgaged the whole herd.[7] What is loosely termed "standing by" presents the third situation. If A, with full knowledge of the circumstances, chooses to remain passive and refrain from asserting his title when he sees his property sold by X, who assumes to own it, to B, an innocent purchaser, A is estopped later to claim it from B.[8] Surely "he who has been silent as to his rights when he ought in good faith to have spoken, shall not be heard to speak when he ought to be silent." [9] A has acted dishonestly in consciously allowing his property to be used to consummate a fraud.[10] But if A is ignorant of his right in the property, the question is entirely altered. In a recent case an illiterate old widower, wholly ignorant of his title to land of his deceased wife, which the children had sold after her death, later discovered and successfully asserted his right to an estate by the curtesy against the apparently innocent vendee. *Dotson* v. *Merritt*, 132 S. W. 181 (Ky.). Innocent non-negligent silence creates no estoppel,[11] not because it is honest — that is immaterial — but because the "stander-by" neither makes nor permits a misrepresentation.[12] He neither holds out nor conceals.[13] His assertion of a subsequently discovered right therefore involves no contradiction of his previous conduct and is now wholly conscionable.

RECENT CASES.

ADVERSE POSSESSION — WHO MAY GAIN TITLE — RELATIVE OF REAL OWNER. — A owned Blackacre and Whiteacre. In 1889 he conveyed the latter to his son. At that time a building on Blackacre also covered a gore-shaped part of Whiteacre. After the Statute of Limitations had run, the land covered by this building was sold on foreclosure to C, who applied for relief from her bid on the ground that the mortgagor did not have title to the gore. *Held*, that relief should be denied. *Timmermann* v. *Cohn*, 44 N. Y. L. J. 1739 (N. Y., Sup. Ct., Jan. 1911).

The law is well settled that after the child attains maturity the father may acquire title against him by adverse possession. *Den* v. *Lane*, 2 N. J. L. 397. So the child may gain title against the parent. *New Haven Trust Co.* v. *Camp*, 81 Conn. 539. Although seldom mentioned, it would seem that the disability of infancy, without reference to the relation of the parties, would protect the child in the majority of cases. Again, the child could not be deprived of his right by the father's fraudulent concealment of the true state of the title. But beyond that the ordinary requisites of adverse possession should suffice. *Scarboro* v. *Scarboro*, 122 N. C. 234; *New Haven Trust Co.* v. *Camp*, *supra*. Hence

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[7] Bank of Holdensville *v.* Kissare, 22 Okla. 545. See EWART, ESTOPPEL, 95.

[8] Pickard *v.* Sears, 6 Ad. & E. 469; Gregg *v.* Wells, 10 Ad. & E. 90. See 18 HARV. L. REV. 140.

[9] *Per* Swayne, J., in Morgan *v.* R. Co., 96 U. S. 716, 720.

[10] Much of the confusion upon the necessity of fraud in the misrepresentation has arisen from stating the rule applicable in cases of passive misrepresentation or "standing by" as if it applied as well to every other case of estoppel.

[11] Willmott *v.* Barber, 15 Ch. D. 96.

[12] Insurance Co. of North America *v.* Miller, 24 Oh. Circ. Ct. 667. See EWART, ESTOPPEL, 88, 89.

[13] It is obvious that other elements necessary to an estoppel are often absent in this class of cases.

cases holding that the rules of adverse possession between strangers are radically modified by the existence of parental and filial relations between the parties can scarcely be supported. *O'Boyle* v. *McHugh*, 66 Minn. 390. A slight inference will naturally be raised by the relation, but a presumption shifting the burden of proof hardly seems necessary for the adequate protection of adult progeny.

BANKRUPTCY — PROVABLE CLAIMS — RIGHTS OF SECURED CREDITOR. — After the filing of the petition in bankruptcy a creditor of the bankrupt liquidated his security, which was not sufficient to satisfy his whole claim. *Held*, that he cannot apply the proceeds first to interest accruing since the filing of the petition, then to principal, and then prove for the balance. *Sexton* v. *Dreyfus* (U. S. Sup. Ct., Jan. 23, 1911).

This reverses the decision in the lower court, criticized in 23 HARV. L. REV. 219.

BILLS AND NOTES — CHECKS — MISAPPLICATION OF FUNDS OF CORPORATION BY OFFICER INDORSING ITS CHECKS. — A, the president of the plaintiff corporation, deposited in the defendant bank to the account of A & Son, a firm of which he was a member, checks payable to the plaintiff corporation, indorsed in blank in its name by "A, president," and then indorsed to the defendant in the name of A & Son. These transactions lasted four months, and included some ninety checks. The plaintiff sued to charge the bank with the amount of these checks, which the bank had allowed A & Son to draw out. *Held*, that the plaintiff can recover. *Niagara Woolen Co.* v. *Pacific Bank*, 141 N. Y. App. Div. 265.

From the form of these checks, it was apparent that the corporation's funds were being used by its president in his private capacity, and those facts were sufficient, especially in view of the large number of checks, to put the defendant upon inquiry as to A's authority. *Squire* v. *Ordemann*, 194 N. Y. 394. See *Capital City Brick Co.* v. *Jackson*, 2 Ga. App. 771. When property is accepted under circumstances which ought to start an inquiry, the holder is charged with notice of all facts which a reasonable inquiry would have disclosed. See *Rochester & Charlotte Turnpike Road Co.* v. *Paviour*, 164 N. Y. 281, 286. Thus it has been held that where a check, signed "X, Agent," is received in payment of a personal debt of X, or where stock in the name of "Y, trustee," is pledged to secure the pledgor's personal debt, the recipient is put upon inquiry by the form of the instruments and accepts them at his peril. *Gerard* v. *McCormick*, 130 N. Y. 261; *Shaw* v. *Spencer*, 100 Mass. 382. The principal case follows a recent New York case which applied the same principles of notice where a bank allowed a treasurer to deposit corporation funds to his individual account, and then check out against it. *Havana Central Railroad Co.* v. *Knickerbocker Trust Co.*, 135 N. Y. App. Div. 313 (reversed on another point in 198 N. Y. 422).

BONDS — INCOME BONDS — WHETHER INTEREST HAS BEEN EARNED. — A railway company that had issued mortgage bonds on which interest was to be paid only as earned, insisted that its earnings during the years in dispute were insufficient to pay the interest. *Held*, that the interest had been earned in spite of the subtlety of the company's bookkeeping. *Central of Georgia Ry. Co.* v. *Central Trust Co. of New York*, 69 S. E. 708 (Ga., Sup. Ct.).

It is always difficult to calculate the true earnings of a corporation, yet it must be done every time a dividend is declared. Ordinarily, however, a stockholder would not question a smaller dividend, for the undistributed earnings, as surplus, would increase the value of his stock. On the other hand income-bond holders would want every possible cent of the earnings paid to them as